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IN THE

Supreme Court of the United States

October Term, 1968

No. 365

M. A. HOLAHAN, Trustee, ET AL.,
Petitioner,

versus

J. HARRY HENDERSON, ET AL.,
Respondents.

On Petition for Writ of Certiorari to The United States Court of Appeals for The Fifth Circuit

BRIEF IN OPPOSITION ON BEHALF OF RESPONDENT, J. HARRY HENDERSON, JR.

JOHN L. PITTS
628 Murray Street
Alexandria, Louisiana

OF COUNSEL:
GROVE STAFFORD, JR.
628 Murray Street
Alexandria, Louisiana

J. G. HAUSER, INC., "Legal Printers", 441 GRAVIER ST., NEW ORLEANS, LA.

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

J. Harry Henderson, Jr., one of the respondents herein, received notice on August 7, 1968 that petitioner had applied to this Honorable Court for a writ of certiorari. This respondent respectfully opposes the granting of such writ for the following reasons:

(1) The legal principles alleged to be involved are well settled and were correctly applied below by the Fifth Circuit Court of Appeal and the District Court.

(2) The liability of this respondent in the cases involving him (designated as Civil Actions 11,488, 11,489 and 11,490 in the District Court), turned purely and simply upon findings of fact.

(3) The factual determinations made below were supported by a heavy preponderance of the evidence.

(4) No special or important reasons ordinarily considered as governing review by this Honorable Court on certiorari exist here.

STATEMENT OF THE CASE

The three suits before the court arose out of a voluntary bankruptcy proceeding filed by The Raven Corporation, which was formed to own and to operate drilling rigs and workover barges for the oil and gas industry. The corporation also had the authority to acquire oil, gas and mineral leases.

The company's business was not successful and its debts shortly exceeded its assets. One of the company's principal assets was the drilling barge, "Belle Rose Lee", which was insured for $375,000.00.

On March 20, 1963, this rig was destroyed by fire, and the company collected $375,000.00 from its insurers. The corporation, after paying some debts, had over $150,000.00 in cash and decided to invest in oil leases.

Mr. Henderson, the company's president, then obtained seven cashier's checks totaling $100,000, and delivered them to Perry H. Coleman, an employee of the company, for his use in obtaining the leases.

He instructed Coleman to cash the checks as needed. Coleman cashed all the checks at one time.

Later, Coleman reported to Henderson that the money had burned in a fire at Coleman's home. The company tried to get the Treasury Department to determine whether redemption of the burned currency could be effected, but this was not possible, according to a witness from the Treasury Department.

The company continued to operate for a while, but was steadily losing money and finally filed a petition in bankruptcy.

The trustee filed five suits against Mr. Henderson, Coleman and Miss Rose Lee Henderson, claiming, among other things, that Mr. Henderson was personally liable to the trustee for the burned money, and was personally responsible for other disposition of corporate funds.

The other suits against Mr. Henderson were equally illfounded, except one suit which claimed reimbursement for Mr. Henderson's personal expenses which had been paid by the Raven Corporation. The lower court awarded the trustee a judgment for $27,253.64 against Mr. Henderson, which judgment was duly paid.

ARGUMENT

The Trial Court and the Court of Appeal gave due consideration to every suggestion and argument advanced by petitioner.

His application presents nothing new, only a restatement of what was well presented to the courts below. It is only a rehashing of the trustee's suspicions and assertions, which were never supported by evidence.

The opinion of the trial judge is correct. In fact, no other conclusion could have been reached from the evidence.

A grant of certiorari in this case could lead to nothing more than a review of the evidence and the inferences thereof in a disputed factual controversy, which is not the function of the writ. Petitioner does not and cannot allege that any constitutional issues are involved in these cases; where no questions of constitutional due process are involved, this Honorable Court will not re-examine findings of fact which are supported by substantial evidence. Specifically, a lower court finding of "good faith" under the bankruptcy laws (which is what is involved in the instant cases) is considered a conclusive finding of fact, not reviewable on certiorari. *Comstock v. Institutional Investors*, 335 U. S. 211, 68 S. Ct. 1454, 92 L. Ed. 1911.

No violence has been done to the principles enunciated by this Honorable Court in *Pepper v. Litton*,

308 U. S. 245, 60 S. Ct. 238, and other cases cited by petitioner. No right-thinking person could quarrel with the holdings of such cases, which holdings were cited to and extensively argued before both lower courts. The fact remains, however, that no showing was made in these cases of any misconduct or violation of such principles on the part of the respondent.

In stating his reasons why this Honorable Court should grant a writ of certiorari, petitioner assumes as proven three crucial points:

(1) that "various schemes of the insiders" were involved;

(2) that "moral or legal improprieties" were involved, and

(3) That "good faith" was lacking in the payment of an employee's salary.

Both courts below held against petitioner on each of these basic points as matters of fact. The efficacy of petitioner's reasons is therefore seriously in question.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

JOHN L. PITTS

OF COUNSEL:
GROVE STAFFORD, JR.

CERTIFICATE

STATE OF LOUISIANA
PARISH OF RAPIDES

JOHN L. PITTS, JR. being duly sworn, deposes and says:

That he is a duly qualified member of the Bar of the Supreme Court of the United States; that he has forwarded copies of the foregoing brief in opposition to the petition for certiorari to Perry H. Coleman and M. A. Holahan by depositing a copy thereof, postage prepaid, to their counsel of record at their last known addresses in Alexandria and New Orleans, Louisiana, on this _____ day of August, 1968.

_____
JOHN L. PITTS

SWORN TO AND SUBSCRIBED before me, Notary, on this _____ day of August, 1968.

_____
NOTARY PUBLIC